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R.F., Appellant)	
)	
and)	Docket No. 11-908
)	Issued: November 9, 2011
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
San Diego, CA, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On March 1, 2011 appellant filed a timely appeal from a September 30, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his left hand conditions and a February 15, 2011 nonmerit decision finding that he abandoned his request for an oral hearing. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant's left hand conditions are due to the accepted September 10, 2009 employment injury; and (2) whether the Branch of Hearings and Review properly determined that he abandoned his request for an oral hearing.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 15, 2009 appellant, a 56-year-old nurse, filed a traumatic injury claim alleging that he sustained injuries to his right shoulder and left hand on September 10, 2009, when he slipped on ivy and fell against the back of his car in a government parking lot.

Appellant was treated by Dr. Richard Greenfield, a Board-certified orthopedic surgeon. On December 16, 2009 Dr. Greenfield provided a history of injury indicating that appellant had sustained an injury at work on September 10, 2009 when he tripped on ivy and landed on both hands. He found swelling in the left thenar region and diagnosed “S/P trauma left thumb; persistent pain, left thumb.”

On January 22, 2010 Dr. Greenfield again found swelling in the thenar region of the left thumb, which was quite tender and diagnosed “[posttrauma] to the left thumb September 10, 2009;” persistent pain in the left thumb; and possible ligament damage to the left thumb. X-rays showed evidence of mild carpometacarpal (CMC) osteoarthritis. He recommended a magnetic resonance imaging (MRI) scan of the left thumb.²

On March 1, 2010 Dr. Greenfield reported that appellant had slight loss of range of motion at the CMC and metacarpophalangeal (MCP) joints and tenderness over the thenar mass. He reviewed the results of a February 22, 2010 MRI scan, which revealed evidence of osteoarthritis of the CMC and MCP joints of the left thumb.

On April 2, 2010 OWCP accepted the claim for left thumb sprain. It informed appellant that his claim was not accepted for osteoarthritis or aggravation of osteoarthritis.

In a letter to OWCP dated May 1, 2010, appellant contended that his injury was more serious than a sprain. He indicated that he was providing records related to a June 18, 2009 neck injury.³

By letter dated May 12, 2010, OWCP informed appellant that the evidence of record was insufficient to establish that his claim should be accepted for additional diagnosed conditions. It advised him to submit a medical report with a diagnosis and a rationalized medical opinion explaining how the diagnosed osteoarthritis was causally related to the accepted September 10, 2009 incident.

In a July 12, 2010 letter, OWCP responded to appellant’s July 9, 2010 voice mail, in which he stated that he had undergone left hand surgery. It informed him that the surgery was not authorized and that a sprain would not result in a need for surgical intervention. Appellant was advised to submit additional medical evidence in support of his claim.

Appellant submitted an April 13, 2010 report from Dr. MaryAnne Bhajwani, a treating physician, regarding his June 18, 2009 neck injury. In a June 4, 2010 disability slip, Dr. Nagmo

² The record contains a report of a February 22, 2010 MRI scan of the left thumb.

³ Appellant’s June 18, 2009 claim (File No. xxxxxx682) was accepted for neck sprain.

Fatakhova, a Board-certified physiatrist, stated that he would be unable to work until August 31, 2010.

In a June 23, 2010 report, Dr. Richard A. Brown, a Board-certified orthopedic surgeon, provided a history of injury and examination findings. He stated that there were no medical records available for his review. On examination, Dr. Brown found “evidence of degenerative change about the distal interphalangeal joints.” There was slight tenderness to palpation about the basilar joint of the left thumb, but no significant crepitus. Regarding the left thumb metatarsophalangeal, there was some tenderness to palpation radioulnarly and marked predominant tenderness palmarly. There was thickening of the flexor tendon with flexion and extension, with very early triggering. Interphalangeal and MCP joint motion was 40 degrees and 35 degrees, respectively. An MRI scan report reflected evidence of degenerative joint disease (DJD) about the CMC and MCP joints. Dr. Brown diagnosed thumb pain with probable elements of trigger thumb and DJD. He recommended that appellant be restricted from any repetitive gripping, grasping or holding on the left side. Dr. Brown stated: “If, in fact, the majority of the problem is from the flexor tendon, then it is likely to be related to his job activities. If the majority of the problem is osteoarthritis, then obviously this is industrial aggravation.”

In a letter dated July 29, 2010, OWCP informed Dr. Brown that appellant’s claim had not been accepted for trigger thumb or osteoarthritis and that appellant would have to file a new claim if he believed that there was a causal relationship between those conditions and his federal employment. It also asked Dr. Brown for his opinion as to whether appellant still suffered residuals from his accepted left thumb sprain.

On July 14, 2010 Dr. Brown diagnosed trigger thumb and likely synovitis. He did not address the cause of the diagnosed conditions.

On August 17, 2010 appellant filed an occupational disease claim (Form CA-2). He repeated the allegations contained in his September 15, 2009 CA-1 form claim, namely, that he injured his left thumb when he tripped and fell on his hands on September 10, 2009.

In a letter dated August 30, 2010, OWCP informed appellant that the evidence of record was insufficient to warrant an expansion of his claim to include left thumb DJD and left trigger thumb, as these conditions were usually associated with cumulative injuries. It advised him to submit a medical report explaining how these diagnosed conditions could have resulted from the September 10, 2009 incident.

Appellant submitted a July 26, 2010 report from Dr. Richard M. Thunder, a Board-certified orthopedic surgeon. Dr. Thunder provided examination findings related to appellant’s cervical condition and diagnosed cervical spondylosis compounded by cervical strain superimposed.

On August 30, 2010 appellant withdrew his occupational disease claim in File No. xxxxxx025. He contended that his September 10, 2009 injury resulted in a trigger thumb and DJD, rather than a sprain. Appellant stated that he never had any problems with his thumb prior

to the accepted incident and requested that his claim be expanded to include DJD and trigger thumb.

By decision dated September 30, 2010, OWCP denied appellant's request to expand his claim to include DJD and trigger thumb. It found that the evidence did not contain a rationalized medical opinion explaining a causal relationship between the diagnosed DJD and trigger thumb conditions and the accepted injury.

On October 5, 2010 appellant requested an oral hearing. In a notice dated December 12, 2010, OWCP informed him that a telephonic hearing would be held on January 19, 2011 at 2:00 p.m. eastern time and that he should be sure to be available to proceed at that time. Appellant was provided with a toll free number, which he was advised to call a few minutes before the time scheduled for the hearing. He was also given a pass code, which he was told to enter when prompted in order to connect him to the telephonic hearing, along with the hearing representative and the court reporter. There is no evidence in the record indicating that appellant contacted the Branch of Hearings and Review at the designated time.

By decision dated February 15, 2011, an OWCP hearing representative found that appellant had abandoned his request for a hearing because he failed to appear at the designated time and there was no indication in the file that he contacted OWCP prior or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ Neither the fact that a disease or condition manifests itself during a

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁸

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for a left thumb sprain. Appellant contends that his claim should be expanded to include additional conditions, including left thumb DJD and left trigger thumb. The medical evidence fails to establish a causal relationship between his newly diagnosed conditions and the accepted September 10, 2009 injury. Therefore, the Board finds that OWCP properly denied appellant's request to expand his claim.

On December 16, 2009 Dr. Greenfield provided a history of injury and examination findings and diagnosed "S/P trauma left thumb; persistent pain, left thumb." On January 22, 2010 he noted radiographic evidence of mild CMC osteoarthritis. On March 1, 2010 Dr. Greenfield reported that appellant had slight loss of range of motion at the CMC and MCP joints and tenderness over the thenar mass. He reviewed the results of a February 22, 2010 MRI scans, which revealed evidence of osteoarthritis of the CMC and MCP joints of the left thumb. None of Dr. Greenfield's reports contains a definitive diagnosis⁹ or an opinion as to the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁰

In his June 23, 2010 report, Dr. Brown provided examination findings and diagnosed thumb pain with probable elements of trigger thumb and DJD. He speculated: "If, in fact, the majority of the problem is from the flexor tendon, then it is likely to be related to his job activities. If the majority of the problem is osteoarthritis, then obviously this is industrial aggravation." On July 14, 2010 Dr. Brown diagnosed trigger thumb and likely synovitis, but he did not address the cause of the diagnosed conditions. His reports are deficient on several counts. They do not contain a definitive diagnosis. Moreover, Dr. Brown's opinion in both instances is vague, speculative and lacking in medical rationale explaining the nature of the relationship between the diagnosed conditions and the accepted incident.¹¹ The Board has consistently held that a medical opinion not fortified by rationale is of diminished probative value.¹² Therefore, Dr. Brown's reports are insufficient to establish appellant's claim to expand the scope of accepted conditions.¹³

Reports and disability slips relating to appellant's cervical condition are irrelevant to the issue at hand. The remaining medical evidence of record, which includes reports of MRI scans

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁰ *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹² *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹³ *Smith*, *supra* note 10.

and x-rays that do not contain an opinion on causal relationship, is insufficient to establish appellant's claim.

The Board finds that appellant has failed to meet his burden of proof to establish that the additional thumb conditions claimed are causally related to the accepted employment injury.¹⁴ The fact that a condition is mentioned in a medical report along with other accepted conditions does not infer that it is related to the work injury. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between his claimed condition and his employment.¹⁵ Accordingly, OWCP properly limited the accepted conditions to left thumb sprain.

On appeal, appellant contends that his chronic joint disease is a result of the accepted incident. For reasons stated, the Board finds the medical evidence insufficient to establish his claim for additional medical conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that before review under section 8128(a), a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of that section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.¹⁶

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.¹⁷

OWCP's procedures provide that a hearing can be considered abandoned only under very limited circumstances. Three conditions must be present, namely: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district office.¹⁸

¹⁴ *Jaja K. Asaramo, supra* note 4.

¹⁵ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁶ 5 U.S.C. § 8124(b)(1).

¹⁷ 20 C.F.R. § 10.616(a).

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant abandoned his request for an oral hearing.

Appellant timely requested an oral hearing. OWCP properly advised him that a telephonic hearing would be held on January 19, 2011 at 2:00 p.m. eastern time. Appellant was given information as to how to contact the hearing representative on the date in question, including the toll free number and the pass code. The record does not reflect and he does not allege, that he requested postponement of the hearing prior to the scheduled date of the hearing.

Appellant did not appear for the oral hearing. Neither did he provide any notification for the failure to appear within 10 days after the scheduled date of the hearing. Appellant's failure to provide any notification, together with his failure to appear at the scheduled hearing (by contacting the hearing representative by telephone), constituted abandonment of his request for a hearing and the Board finds that OWCP properly so determined.

On appeal, appellant states that he was home at the time of the scheduled hearing, but that he received no call or message. As noted, however, it was his burden to provide notification for his failure to attend the hearing within 10 days of the scheduled date of the hearing. For reasons stated, the Board affirms OWCP's February 15, 2011 decision.

CONCLUSION

The Board finds that appellant failed to establish that his claim should be expanded to include additional left hand conditions due to the accepted employment injury. The Board further finds that he abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs
February 15, 2011 and September 30, 2010 decisions are affirmed.

Issued: November 9, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board